IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1115

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, et al.,

Petitioners,

v.

COUNTY OF VOLUSIA, etc., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1115

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, and INTERNATIONAL SPEEDWAY CORPORATION,

Petitioners,

v.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida; ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of the County of Volusia; and HARRY L. COE, JR., as Executive Director, Department of Revenue, State of Florida,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the decision of the Supreme Court of Florida in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976), which confirmed the taxability of the leasehold of International Speedway Corporation, denied petitioners a "plain, speedy and efficient remedy" within the meaning of the Tax Injunction Act, 28 U.S.C. §1341.

STATEMENT

In 1971, the Florida Legislature enacted Ch. 71-133, Laws of Florida 1971, known as the Tax Reform Act. The Act subjected private leaseholds in government-owned lands to ad valorem taxation. Section 196.001(2), Florida Statutes. In addition, Section 14 of Ch. 71-133 repealed special-act tax exemptions throughout the State.[1]

Petitioners, International Speedway

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[1]The Florida Legislature later specifically repealed the special-act exemption relied on by petitioners, by enacting Ch. 73-647, Laws of Florida 1973.

Corporation, et al., filed suit in the Circuit Court for Volusia County, Florida, to contest the 1974 ad valorem tax levied on the corporation's leasehold. Their federal suit contesting the same tax was dismissed and the dismissal was affirmed on appeal. Daytona Beach Recreational Facilities District v. County of Volusia, 512 F.2d 1404 (5 Cir. 1975). Petitioners then amended their state court complaint by adding their impairment of contract claim "under protest."

Thereafter, all parties moved for summary judgment in the Florida Circuit Court. Petitioners moved for summary judgment on state grounds only, i.e., "only as to the issue of public purpose." Respondents moved for summary judgment on all issues.

The Florida Circuit Court heard both motions for summary judgment. Contrary to petitioners' assertion at page 6 of their

petition that "no evidence or argument was presented on the federal claim," evidence and arguments were submitted on the impairment of contract claim. Petitioners filed an "Affidavit in Opposition to Defendants' Motion for Summary Judgment," signed by the President of International Speedway Corporation, in support of their impairment of contract claim.[2] (Respondents' Appendix A, p. la) The respondent Florida Department of Revenue submitted a written memorandum of law which opposed the impairment of contract claim on the authority of Straughn v. Camp, 293 So.2d 689 (Fla. 1974); Camp v. Straughn, 491 U.S.

[2]The record also contained extensive pleadings, exhbits and other affidavits. Petitioners described the leasing arrangements in detail in their amended complaint and attached copies of the leases as exhibits. The amended complaint reveals that the private corporation leased the subject property from the District on November 8, 1957 -- two years after the Legislature enacted the special-act exemption.

891 (1974);[3] and other cases.

After the hearing, the Florida Circuit Court entered Summary Final Judgment in favor of petitioners, on state grounds. The Court recited in the judgment:

> "THIS CAUSE was considered by the Court upon motions by all parties for Summary Judgment, everyone agreeing that there are no facts in dispute."

On respondents' appeal to the Supreme Court of Florida, respondents assigned as error the Circuit Court's failure to grant their motion for summary judgment. That issue was argued by all parties in the Supreme Court of Florida. Respondents again relied on Straughn v. Camp, 293 So.2d 689 (Fla. 1974), app. dism., 491 U.S. 891 (1974) and other authorities.

[3]In the Camp case, private lessees of government-owned lands on Santa Rosa Island claimed that the 1971 repeal of the 1949 special act exempting Santa Rosa Island properties from taxation impaired the obligation of contract. The Supreme Court of Florida rejected the argument on the basis of both Florida and federal authorities. This Court dismissed the lessees' appeal for want of a substantial federal question.

Petitioners relied on the affidavit of the President of International Speedway Corporation filed in support of their impairment of contract claim. (Respondents' Appendix B, p. 6a)

Before the Supreme Court of Florida denied petitioners' exemption claim, petitioners did not object to the presentation or hearing of arguments on the impairment of contract issue in either the Circuit Court or the Supreme Court of Florida.

ARGUMENT

At page 6 of their petition, petitioners accuse the Supreme Court of Florida of "summarily" rejecting their impairment of contract claim without evidence or argument. The accusation is unjustified and factually inaccurate.[4] The impairment

[4] In their arguments to the Supreme Court of Florida, petitioners themselves asserted that the Circuit Court "had sufficient evidence before it in the nature of the Affidavit of William H. G. France [footnote continued]

of contract issue was properly before both the Florida Circuit Court and the Supreme Court of Florida. It was raised in the Circuit Court by respondents' motion for summary judgment on all issues. It was raised in the Supreme Court by respondents' assignment of the denial of their motion for summary judgment as error. Petitioners did not move to strike that assignment of error, nor did they object to argument on the impairment of contract issue until the Supreme Court of Florida had ruled against them. Petitioners acknowledged that their impairment of contract claim was before the court by filing the affidavit of William H. G. France in the Circuit Court

and therefore there were no genuine issues of fact as to the granting of the motion in favor of Plaintiffs." (Emphasis supplied.) (Respondents' Appendix B, p. 6a) At no time before the Supreme Court of Florida ruled against them did petitioners argue that the evidentiary record was insufficient or that factual issues precluded the entry of summary judgment in favor of respondents.

and by relying on that affidavit in their arguments to the Supreme Court of Florida. Respondents argued the impairment of contract issue at length in both courts and petitioners did not object. The fact that petitioners chose to emphasize Florida law in their arguments, instead of stressing their impairment of contract claim, does not give them reason to complain here.[5]

Petitioners rely on Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299 (1952), in which this Court held that Georgia did not afford a "plain, speedy and efficient" remedy within the meaning of the Tax Injunction Act, 28 U.S.C. §1341. However, that case and this one are fundamentally different. In the Georgia Railroad case, this Court considered the controversy after the Supreme Court of Georgia had ruled that Georgia statutes did not afford the railroad any right of judicial review of the State Revenue Commissioner's decision that its property was taxable. Georgia Railroad & Banking Co. v. Redwine, 208 Ga. 261, 66 SE2d 234 (1951).[6]

Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299 (1952) and United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) both dealt with express legislative covenants, the contractual nature of which was not disputed.[7] In this case,

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[5]Petitioners' tactical decision to emphasize state law arguments is understandable. Under substantially identical circumstances, the impairment of contract argument had been rejected a short time earlier by both the Supreme Court of Florida and by this Court. Straughn v. Camp, 293 So.2d 689 (Fla. 1974), Camp v. Straughn, 491 U.S. 891 (1974).

[6]In contrast, Chapter 194, Florida Statutes, provides a comprehensive system of administrative and judicial review of Florida ad valorem tax assessments. Chapter 86, Florida Statutes, also confers broad jurisdiction on Florida courts to award declaratory relief.

[7]The State of Georgia did not deny that the railroad's charter constituted a contract which could not be impaired by subsequent legislation. Wright v. Georgia [footnote continued]

petitioners' impairment of contract claim is patently invalid because of the non-existence of any contract.[8] Contracts to grant permanent tax exemptions must be express and cannot be created by implication. Providence Bank v. Billings, 29 U.S. (4 Pet.) 514 (1830); Christ Church v. County of Philadelphia, 65 U.S. (24 How.) 300 (1861). Such contracts must be shown to exist and their scope and duration are never extended beyond their express terms. Tucker v. Ferguson, 89 U.S. (22 Wall.) 527,

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Railroad & Banking Co., 216 U.S. 420, 422 (1910). Similarly, the parties did not deny the contractual character of the 1962 statutory covenant considered in United States Trust Co. v. New Jersey, 431 U.S. 1, 18 (1977).

[8]In 1965, the Supreme Court of Florida affirmed the validity of the 1955 special-act exemption in dispute here (Sec. 13, Ch. 31,343), but expressly held that the exemption privilege conferred by the statute was subject to legislative repeal. The Court said, "Like the Almighty in all things, the Legislature in certain mundane things 'giveth and taketh away.'" Daytona Beach Racing and Recreational Facilities District v. Paul, 179 So.2d 349, 355 (1965).

574 (1875). Action in reliance on non-contractual tax exemption statutes does not breathe contractual life into them. Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 386 (1903).

This is the second occasion on which petitioners have presented their impairment of contract claim to this Court. Their appeal from the Supreme Court of Florida's decision in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1977), on impairment of contract grounds, was dismissed for want of a substantial federal question. Daytona Beach Racing and Recreational Facilities District v. Volusia County, 434 U.S. 804 (1977).[9]

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[9]Both the Supreme Court of Florida and this Court have repeatedly rejected the constitutional objections of private lessees of Santa Rosa Island properties, to the repeal of their special-act exemptions and the ad valorem taxation of their leaseholds. Straughn v. Camp, 293 So.2d 689 (Fla. 1974), app. dism. 491 U.S. 891 (1974) [footnote continued]

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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(impairment of contract); Williams v. Jones, 326 So.2d 425 (Fla. 1975), app. dism. 429 U.S. 803 (1976)(denial of equal protection and impairment of contract); Hord v. Askew, 359 So.2d 455 (Fla. 1978), app. dism. 58 L.Ed.2d 314 (1978)(impairment of contract). This Court dismissed all of these appeals for want of a substantial federal question.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Brief for Respondent in Opposition have been furnished, by mail, this 12th day of February, 1979, to each of the following:

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Harold F. X. Purnell

APPENDIX A

Petitioners' Affidavit Filed In
Florida Circuit Court

IN THE CIRCUIT COURT FOR
VOLUSIA COUNTY, FLORIDA

CIVIL ACTION NO. 74-2861-01

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, etc., et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, etc.,
et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA
COUNTY OF VOLUSIA

Before me, the undersigned authority, personally appeared William H. G. France, who, after being duly sworn, deposes and says:

1. My name is William H. G. France, President of Plaintiff, International

Speedway Corporation, a Florida corporation, and all matters contained herein are true and correct to the best of my knowledge.

2. This Affidavit is made in opposition to Defendants' Motion for Summary Judgment filed herein in the above styled cause.

3. Plaintiff, International Speedway Corporation, undertook substantial financial obligations in reliance upon Sections 12 and 17 of Chapter 31343, Laws of Florida of 1955, which recognized the public function performed by the construction and operation of the subject racing facility and insured to the owners of the facility, as well as to private investors who would have purchased bonds, that their property would at all times be free of state and local ad valorem taxes.

4. Because conventional financing was not available for construction of the

subject racing facility because of the restrictive nature of the lease, funds were obtained by the International Speedway Corporation at high interest rates and certain of the loans required the personal endorsement of principal officers and stockholders of the corporation.

5. Plaintiff, International Speedway Corporation, has always considered Section 13 of the aforementioned 1955 Special Act as constituting a legislative contract under which the legislature of Florida, by special enactment directed to the local conditions in Daytona Beach, warranted to the Plaintiff, Daytona Beach Racing and Recreational Facilities District, and all those acting in concert with it to carry out its public purposes, that their property would be free from taxation for the duration of the Plaintiffs' agreements in accordance with existing state laws. By unilaterally attempting to with-

draw the tax exemption, the legislature has breached its promise in violation of the constitutional prohibition and has impaired the District's ability to perform the subject contract.

6. Plaintiff, International Speedway Corporation, would not have undertaken the construction and financing it did in 1958 if it had not been insured, by the provision of the law and by the indemnification agreement of Plaintiff District, that its interest in the real property would not be subject to taxes. The sudden attempt to impose taxes on the International Speedway Corporation's interest will, if not restrained, substantially diminish the value of its contract right and impair the ability of the corporation to carry out the public purpose mandated by the 1955 Act.

Further Affiant sayeth not.

/s/ William H. G. France
William H. G. France Pres.

Sworn to and subscribed
before me this 21st day
of February, 1975.

/s/ Norma L. Watson
Notary Public, State of Florida
at Large.
My commission expires: Aug. 5, 1976

APPENDIX B

Excerpt From Petitioners' Brief
Filed In Supreme Court of Florida

B. THE TRIAL COURT PROPERLY DENIED DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT.

It is submitted that the trial court had sufficient evidence before it in the nature of the Affidavit of William H. G. France and therefore there were no genuine issues of fact as to the granting of the motion in favor of Plaintiffs. A decision affirming the trial court's entry of judgment in favor of Plaintiffs renders Defendants' Motions for Summary Judgment moot. Since the trial court properly granted Plaintiffs' motion then it necessarily follows that it properly denied the motions of Defendants.